IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6035 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

TILAKLAL CHANANMAL SAHANI THROUGH REAL BROTHER

Versus

STATE OF GUJARAT, THROUGH ADDL CHIEF SECRETARY

Appearance:

1. Special Civil Application No. 6035 of 2000

MR NIRUPAM NANAVATY Sr. Advocate with MR HR PRAJAPATI

MR D.N.PATEL, AGP AND MR K.T.DAVE, AGP

for Respondent No. 1-3

MS P.J.DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 27/09/2001

ORAL JUDGEMENT

Leave to delete respondent No.4 and leave to add

respondent No. 4 as Union of India is granted. Ms P.J.Davawala, learned counsel for respondent No.4 appears and waives service of notice of rule on behalf of respondent No.4.

2. By means of filing this petition under Article 226 of the Constitution of India, the petitioner/detenue who has been detained by the District Magistrate, Surat, vide order dated December 24, 1999 in exercise of the powers conferred under sub-Section 2 of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ('P.B.M. Act' for short hereinafter), has challenged the said order and prayed to issue a writ in the nature of mandamus or any other writ, order or direction declaring Section 3 of the PBM Act as unconstitutional, Central Government has no jurisdiction, competence, authority or power to provide for and prescribe the parameters governing the quality of essential commodity while exercising the powers under the Essential Commodities Act, 1955 ('Act' for short) and also declaring the Motor Diesel (Regulation of Supply and Distribution and Prevention of Mal Practices) order, 1998 is beyond the scope and purview of section 3 of the Act and also to quash and set aside the order impugned and setting the petitioner at liberty forthwith.

3. At the outset Mr. Nirupam Nanavaty, learned Sr. counsel for the petitioner is not pressing the substantive reliefs prayed in sub paragraphs A, B, C of para 61 of the petition. The petitioner confines only to the relief prayed in clause D of para 61 of the petition.

4. The averments made in the petition and the grounds of detention manifest that the petitioner is dealing in petroleum products since 1981. The petrol pump installed by the petitioner firm had been checked several times in the past. The petitioner used to maintain a visit book as prescribed in the State Government and Central Government orders. On September 18, 1999, the petrol pump situated near Surat Textile Market, Ring Road, Surat was raided by Ms Kalpanaben Trivedi, District Supply Officer, Surat District along with her staff at 8:30 PM. During that visit and the raid carried out, no partner of the firm was present. As per the panchnama prepared by the raiding party, a tanker bearing registration No. GJ-5-U-1331 was found in the process of unloading 4000 liters of unknown liquid material into the under-ground tank of motor spirit from the compartment of the tanker. The raiding party sealed all the outlets i.e. dispensing unit and thereafter supervised compelled unloading of the said unknown liquid

into tank No.1. During that raid it was found that mixture solvent was being added into petroleum tank. Therefore, according to the detaining authority, the petitioner is carrying the activities in a manner prejudicial to the maintenance of supply of commodities essential to the community and public at large and therefore, the authority found it necessary to detain the petitioner on the grounds stated in the impugned order.

5. Though the petitioner has challenged the order of detention on various grounds, Mr.Nirupam Nanavaty, learned Sr. counsel for the petitioner has restricted his arguments to the fact that some of the pages of the documents supplied to the petitioner/detenu are illegible and therefore, petitioner's right to make an effective representation enshrined in Article 22(5) of the Constitution has been infringed and therefore, on the sole ground, petition deserves to be allowed by quashing and setting the order of detention and setting the petitioner at liberty forthwith. Besides this, Mr. Nanavaty has also contended that the ground mentioned by the detaining authority that action under Section 12(AA) of the Act could have been taken, but considering the perpetuated illegal activities and the time that may be consumed in taking the action under Section 12(AA) of the Act, and after the release of the petitioner on bail the possibility that he may continue the said activity, action under Section 12(AA) of the Act was found not sufficient and the only remedy left with the authority was to detain him, suffers from vices of the non-application of mind on the part of the detaining authority in view of the fact that Section 12(AA) of the Act is no more in force after 1987. He, therefore, urged that the order passed by the detaining authority suffers from non-application of mind and deserves to be quashed and set aside. He has also drawn my attention to the fact that two other co-detenus are also released vide order dated March 16, 2000 recorded in Special Civil Application No. 10551 of 1999 by this Court (Coram : A.L.Dave, J) and vide order dated October 20, 2000 recorded in Special Civil Application No. 9964 of 2000 by this Court (Coram:D.P.Buch, J), therefore also the present petitioner/detenu may be given same treatment by allowing this petition.

6. On behalf of Government of Gujarat, petition is contested by making oral submissions. However, so far as non-supply of the legible documents is concerned, it is not disputed by the learned counsel appearing on behalf of the State of Gujarat and therefore, learned advocates

appearing for the parties have urged to pass appropriate order considering the various pronouncements of the Supreme Court as well as this Court in this regard.

7. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition and the documents annexed therewith and also considered the orders dated March 16, 2001 recorded in Special Civil Application No. 10551 of 1999 and October 20, 2001 recorded in Special Civil Application No. 9964 of 2000 by this Court.

8. At the outset, it may be appreciated that initially this petition was filed at pre-execution stage wherein various reliefs including declaring Section 3 of the PBM Act as unconstitutional were claimed. Beside this, various allegations were also made in the Memo of Petition against the District Magistrate, Surat as well as the personnel of his office. Mr. Nanavaty seeks leave to delete those reliefs and allegations made against the detaining authority i.e. District Magistrate, Surat as well as officers of the State which are more particularly made in paragraphs 3, 46, 47, 48, 49 and 58. He also seeks leave to withdraw Annexures-W and Annexure-X wherein also allegations are levelled against the officers of the State Government. It is also required to be noted that the petitioner/detenu has surrendered himself before the authority on date i.e. September 27, 2001.

9. On the facts and in the circumstances emerging from the record of the case, permission to delete paragraphs as well as Annexures as mentioned above by the learned Sr. counsel is granted.

10. On having perusal of the impugned orders, there is no manner of doubt that the detaining authority has observed in its order that in view of the provisions contained in Section 7 of the Act, step under Section 12(AA) of the said Act can be taken against the petitioner. It is further observed that in view of the perpetuated illegal activities of the petitioner and resorting to action under Section 12(AA) of the said Act is likely to consume lot of time, action under P.B.M. Act is taken. Besides this petitioner would have continued said illegal activities after getting released on bail by obtaining order from the competent court, step under Section 12(AA) was found insufficient to curb the activities of the petitioner/detenu and, therefore, the only remedy for the detaining authority was to pass the

order under Section 3(2) of the P.B.M. Act by detaining the petitioner.

11. So far as the provisions contained in Section 12(AA) of the Act is concerned, Section 12(AA) was inserted by way of amendment in the year 1982 which remained in force up to 1987 and thereafter the said provision of Section 12(AA) is not continued in the Act. Therefore, obviously, at the time of considering or passing the impugned order of detention, the said provision was not in existence. Notwithstanding the same, detaining authority has considered the said provision while passing the order of detention. That itself shows total non-application of mind on the part of the detaining authority and on this sole ground order of detention deserves to be quashed and set aside.

12. The next question which requires to be considered in this case is as to whether non-supply of the legible copies of the documents referred to and relied upon by the detaining authority while passing the impugned order has caused prejudice to the right of the petitioner of making an effective representation and thereby provisions of Article 22(5) of the Constitution are infringed.

13. A similar question arose in the case of VIKRAMSINH V. STATE OF GUJARAT - 1988 (2) GLH 414. In that case some of the pages of the judgement supplied to the petitioner were not legible which resulted in non-communication of the grounds and thereby petitioner's right of making an effective representation to the concerned authority is infringed and therefore, order of detention was quashed and set aside.

14. Applying the aforesaid principle to the facts of this case, on having perusal of the documents supplied to the petitioner/detenu by the detaining authority, many pages supplied to the petitioner are illegible, therefore, according to me it has seriously caused prejudice to the right of the petitioner of making effective representation to the concerned authority and therefore right enshrined in Article 22(5) of the Constitution is infringed.

15. Besides this, two other co-detenus have also been released by this Court vide orders dated March 16, 2000 and October 20, 2000, therefore, on this ground also, petitioner can be released by giving same treatment.

16. In view of the aforesaid three grounds, petition deserves to be allowed by quashing and setting the

impugned order of detention and setting the petitioner at liberty forthwith.

17. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated December 24, 1999 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

It is submitted by Mr. Nirupam Nanavaty, learned Sr. counsel for the petitioner that writ of this judgement/order may be sent to the Central Jail, Sabarmati, Ahmedabad.

Registry is therefore, directed to send the writ of this judgement/order to the Central Jail, Sabarmati, Ahmedabad.

(A.M.Kapadia, J)

Jayanti*